Supreme Court, U.S.
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No. 93-402

In The

Supreme Court of the United States

October Term, 1993

DAVID L. EVANS, ET AL.,

Petitioners,

v.

HERBERT J. HEICHELBECH, III, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

REPLY TO BRIEF IN OPPOSITION

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QUESTION PRESENTED

Should this Court decline to review this case on the basis of mootness, as urged by Respondent, when the impact of the decisions below is that the State cannot provide voluntary hospitalization for mentally ill wards based on the consent of their guardian, even if the ward is mentally ill, needs hospitalization, and his court-appointed guardian believes hospitalization is in his best interest.

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The main argument in Respondent's Brief in Opposition to the Petition for Certiorari is that this case is moot and that there is not sufficient adversariness to invoke the Court's jurisdiction under Article III. Respondent stated that he has nothing at stake in this litigation, because he is no longer confined in a state mental hospital and the damages issue was dismissed. (Brief in Opposition, page 10). Additionally, Respondent suggested that this case no longer had sufficient adversariness to invoke this Court's

jurisdiction, because Petitioners have "voluntarily" abandoned the policy challenged in this lawsuit. (Brief in Opposition, pages i and 9).

A review of the proceedings below, however, shows that Respondent's argument that this case is moot is merely a disingenuous attempt to persuade this Court to deny certiorari, in order to uphold the *stare decisis* effect of the decisions below. Several factors support this conclusion.

First, Mr. Heichelbech was discharged from the State hospital *prior* to the decision of the district court below. At that time, Mr. Heichelbech vigorously opposed dismissal of this case based on mootness and argued to the court that it was fairly certain that he would be confined again in the future. In his brief to the district court Mr. Heichelbech proposed "Findings of Fact and Conclusions of Law" as follows:

> This Court is aware that Plaintiff Heichelbech has now been released from Central State Hospital, but this event does not moot his claim for injunctive relief. * * * The claims of Plaintiff Heichelbech are 'capable of repetition, yet evading review.'
>
> * * *
>
> This Court finds that there is a substantial controversy between the Plaintiff Heichelbech and all Defendants which have adverse legal interests of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.
>
> * * *

> The Court recognizes that it is substantially more difficult to moot an action for declaratory relief than injunctive relief.

The district court agreed that Mr. Heichelbech's claims were thus capable of repetition, yet evading review, and the court declined to dismiss the case. (*See* Petition for Certiorari, page 20a.) Respondent did not raise the mootness issue before the Eleventh Circuit Court of Appeals.

Secondly, it is misleading to state that the Petitioners have "voluntarily" abandoned their policy, as was stated by Mr. Heichelbech. (Brief in Opposition, page i). Obviously, Petitioners must abide by the lower court's decision unless it is overturned. However, Petitioners represented to the court and to the parties below that they would appeal an adverse decision and, clearly, Petitioners are still pursuing that appeal. Petitioners have not voluntarily abandoned their policy, but have done so only due to legal mandate.

Third, and most significantly, the *stare decisis* impact of the decisions below precludes the State from providing voluntary hospitalization to mentally ill wards based on the consent of the guardian. The decisions require the State to initiate involuntary commitment procedures if a ward requests discharge and to discharge any ward who does not meet the involuntary commitment criteria, even if the ward is mentally ill, needs hospitalization, and his court-appointed guardian believes hospitalization is in his best interests. This is the exact result sought by Mr. Heichelbech and two intervenors. It is also the result sought by their counsel, the Georgia Legal Services Program, an advocacy organization which opposes institutionalization of a person based on the consent of the

parent or guardian. *Parham v. J.R.*, 442 U.S. 584 (1979). The decision of the district court constitutes binding precedent unless it is overturned by this Court.

For the above-stated reasons, it is clear that this case has significant impact on the policies and practice of the State, and it is not moot as suggested by Mr. Heichelbech. Petitioners urge that this Court grant certiorari to review this important decision. Should the Court determine, however, that the issue is moot, this Court should grant certiorari and vacate the order below. Where a case has become moot on its way to this Court or pending the decision by this Court on the merits, the established practice is to summarily grant certiorari, vacate, and remand to dismiss. *Sivley v. Soler*, ___ U.S. ___, 113 S.Ct. 454, 121 L.Ed.2d 364 (1992); *Yellow Freight System, Inc. v. United States*, ___ U.S. ___, 113 S.Ct. 31, 121 L.Ed.2d 4 (1992); *Dillon v. Alleghany Corp.*, ___ U.S. ___, 111 S.Ct. 1383, 113 L.Ed.2d 441 (1991). If there is nothing at stake for Respondent, then he should not hesitate to have the decision below vacated.

Respectfully submitted,

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